

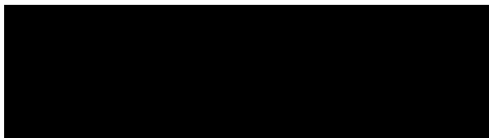


U.S. Department of Justice

Immigration and Naturalization Service

D7

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



AUG 16 2000

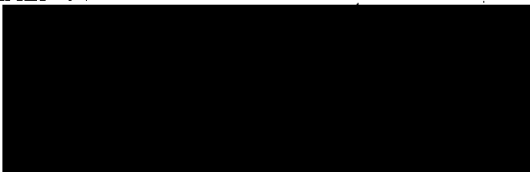
File: EAC 00 011 50763 Office: Vermont Service Center Date:

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner, a company engaged in the import and sale of diamonds and jewelry, seeks authorization to employ the beneficiary temporarily in the United States as the manager of its New York office. The director determined that the petitioner had submitted insufficient evidence to establish that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel argues that the "rationale for the dismissal is unreasonable." Counsel further argues that the beneficiary would be employed in a primarily managerial or executive capacity, and that the petition should be approved.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

8 C.F.R. 214.2(1)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organization as defined in paragraph (1)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, a managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition

(iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive, or involved specialized knowledge and that the alien's prior education, training, and employment qualifies

him/her to perform the intended services in the United States.

The U.S. petitioner states that it was established in 1990 and that it is an affiliate of [REDACTED] located in India. The petitioner declares five employees and a gross annual income of approximately \$3,313,000. It seeks authorization to employ the beneficiary for two years at an annual salary of \$35,000.

At issue in this proceeding is whether the beneficiary will be employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

"Managerial capacity" means an assignment within an organization in which the employee primarily-

i. manages the organization, or a department, subdivision, function, or component of the organization;

ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

"Executive capacity" means an assignment within an organization in which the employee primarily-

- i. directs the management of the organization or a major component or function of the organization;
- ii. establishes the goals and policies of the organization, component, or function;
- iii. exercises wide latitude in discretionary decision-making; and
- iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner describes the beneficiary's duties as follows:

Since October of 1996, [the beneficiary] has been serving as the marketing and sales manager of the [REDACTED]. He has traveled extensively and is thoroughly familiar with customers and markets for Indian finished diamonds, especially those in the United States. He has surveyed and studied the market for diamonds, conferred with customers and potential customers, on their requirements as to quality, size and cost of goods, planned and directed the selection of goods for sales presentation abroad, and directed the fulfillment of orders.

He has set and revised prices based on his knowledge of our costs and market demand. He has negotiated major supply contracts with customers, including payment and credit terms and shipping and delivery schedules. He has met with, and retained the services of customs house brokers and reviewed and assessed their work. He has worked closely with us as the sales and marketing manager for our international organization.

In New York, in addition to overseeing the activities of the American business, [the beneficiary] would also continue with his export sales and marketing management duties for the international organization. He will study the U.S. market for our products and plan, develop and direct our marketing activities. He will also organize and direct the fulfillment of orders and oversee and monitor the processing of orders from manufacturing to selection from inventory, to delivery to shippers, to clearing customs in the United States, to delivery to the customers. His role will be crucial to our continuing growth in the United States and his knowledge of our products, customers and markets make

him uniquely we; (sic) qualified to direct [REDACTED]
[REDACTED]

On appeal, counsel resubmits a copy of the petitioner's description of the beneficiary's duties and argues that the "denial is unreasonable because a description of duties was demanded by the Service and only testimonial not documentary evidence can be provided regarding the duties."

The information provided by the petitioner describes the beneficiary's duties only in broad and general terms. There is insufficient detail regarding the actual duties of the assignment to overcome the objections of the director. Duties described as analyzing the U.S. diamond market and making decisions as to what qualities and sizes of stones to market, planning and determining production schedules, determining potential profit margins, and fulfilling major orders and supply contracts, are without any context in which to reach a determination as to whether they would be qualifying. Other duties such as meeting with major customers, and planning business strategy, have not been demonstrated to be managerial or executive in nature. The use of the position title of "manager" is not sufficient.

The record contains insufficient evidence to demonstrate that the beneficiary will be employed in a primarily managerial or executive capacity. The petitioner has provided no comprehensive description of the beneficiary's duties that would demonstrate that the beneficiary will be managing the organization, or managing a department, subdivision, function, or component of the company. The petitioner has not shown that the beneficiary will be functioning at a senior level within an organizational hierarchy other than in position title.

Further, the petitioner's evidence is not sufficient in establishing that the beneficiary will be managing a subordinate staff of professional, managerial, or supervisory personnel who relieve him from performing nonqualifying duties. It appears that the beneficiary will be the sole employee. Based on the evidence furnished, it cannot be found that the beneficiary will be employed in a primarily managerial or executive capacity. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.